

M. VAN SMITH
State Bar No. 32007
1696 Mendenhall Drive
San Jose, California 95130
Telephone (408) 364-1062
Attorney for Plaintiff
ISAAC TANNER

**THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ISAAC TANNER, Plaintiff,
vs.
PODS, INC. a corporation, et al., Defendants.

No. C07-02392 JL

**NOTICE OF MOTION AND MOTION
FOR ATTORNEY'S FEES; DECLARATION**

Date: July 11, 2007
Time: 9:30 a.m.
Courtroom F, 15th Floor
Honorable James Larson

TO: DEFENDANT AND TO ITS ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that at the date, time and department specified above, at 450 Golden Gate Ave., San Francisco, California 94612, the motion of Plaintiff Isaac Tanner for an order that Plaintiff be awarded attorney's fees.

The motion will be based on the ground that the Notice of Removal of the case to the United States District Court was untimely, being filed more than 30 days from the date that is ascertainable that the complaint could be removed.

Dated: June 4, 2007

M. Van Smith
M. VAN SMITH
Attorney for Plaintiff

1 MEMORANDUM RE ATTORNEY'S FEES

2 Plaintiff requests attorney's fees pursuant to 28 U.S.C. §§ 1446 and 1447 where an action
3 has been improperly removed to a federal court. The amended version of § 1447(c) provides in part
4 that: "An order remanding the case may require payment of just costs and any actual expenses,
5 including attorney fees, incurred as a result of the removal."

6 Plaintiff requested that Defendant stipulate to a remand before filing this case. The
7 attorney's fees for preparing this motion could have been avoided. In accordance with the Local
8 Rule, Plaintiff has prepared a separate motion.

9 Dated: June 4, 2007.

10 
M. VAN SMITH

11 Attorney for Plaintiff

12 DECLARATION OF M. VAN SMITH IN SUPPORT
13 OF MOTION FOR ATTORNEY'S FEES

14 I, M. Van Smith, state:

15 1. I am the attorney for the Plaintiff.

16 2. I spent three and one-half hours writing the letters and preparing and filing this motion
17 and the Motion to Remand. My rate for this case is \$500 per hour. I request attorney's fees of
18 \$1,750.

19 I declare under the penalty under the laws of the United States of America that the foregoing
20 is true of my own knowledge.

21 Executed at San Jose, California on June 4, 2007.

22 
M. VAN SMITH